

Page 1

THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

RANDY BLAKE PATTERSON,)

Plaintiff,)

vs.)

) Case No. CJ-2015-5283

NATIONAL BOARD OF MEDICAL)

EXAMINERS,)

Defendant.)

DEPOSITION OF HERMAN JONES, Ph.D.

TAKEN ON BEHALF OF THE DEFENDANT

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 31, 2016



METROPOLITAN BUILDING
400 North Walker, Suite 160
Oklahoma City, OK 73102
405-235-4106

MID-CONTINENT TOWER
401 South Boston, Suite 310
Tulsa, OK 74103
918-599-0507

depo@drreporting.com

REPORTING & VIDEO, INC.
REPORTED BY JILL TUCKER SHAW, CSR #1459

EXHIBIT

tabbles

116

Herman Jones, Ph.D.

August 31, 2016

Page 1

THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

RANDY BLAKE PATTERSON,)
)
 Plaintiff,)
 vs.)
) Case No. CJ-2015-5283
 NATIONAL BOARD OF MEDICAL)
 EXAMINERS,)
)
 Defendant.)

DEPOSITION OF HERMAN JONES, Ph.D.
 TAKEN ON BEHALF OF THE DEFENDANT
 IN OKLAHOMA CITY, OKLAHOMA
 ON AUGUST 31, 2016

REPORTED BY JILL TUCKER SHAW, CSR #1459

Page 3

EXAMINATION INDEX

HERMAN JONES, Ph.D.

DIRECT BY MS. ALDEN 5
 CROSS BY MS. TEMPLETON 39

EXHIBIT INDEX

Page

Defendant's Exhibits

1 USMLE Certified Transcript of Scores 20
 2 URMP Applicant Report 23
 3 Medical Student Performance Evaluation of 27
 Randy Blake Patterson
 4 Letter from Clark & Mitchell to Jack 35
 Dawson and Amy Alden dated June 24, 2016

Page 2

APPEARANCES

FOR THE PLAINTIFF:

STEVEN E. CLARK
 KATIE TEMPLETON
 Attorneys at Law
 Clark & Mitchell, P.C.
 101 Park Avenue, Suite 210
 Oklahoma City, Oklahoma 73102
 (405) 235-8488
 Katie@clarkmitchell.com

FOR THE DEFENDANT:

AMY ALDEN
 Attorney at Law
 Miller Dollarhide
 210 Park Avenue, Suite 2550
 Oklahoma City, Oklahoma 73102
 (405) 235-8130
 Alden@millerdollarhide.com

FOR THE WITNESS:

JENNIFER NEEDHAM
 Attorney at Law
 OU Health Sciences Center
 1105 N. Stonewall, Suite 221
 Oklahoma City, Oklahoma 73117
 Jennifer-needham@ouhso.edu

Page 4

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED BY and
 between the parties hereto, through their respective
 attorneys, that the deposition of HERMAN JONES,
 Ph.D., may be taken on behalf of the Defendant on
 August 31, 2016, in Oklahoma City, Oklahoma, by Jill
 Tucker Shaw, Certified Shorthand Reporter for the
 State of Oklahoma, pursuant to Notice and agreement.

IT IS FURTHER STIPULATED AND AGREED BY and
 between the parties hereto, through their respective
 attorneys, that all objections, except as to the form
 of the question and responsiveness of the answer, are
 Reserved until the time of trial, at which time they
 may be made at the time of the taking of this
 deposition.

1 (Pages 1 to 4)

Herman Jones, Ph.D.

August 31, 2016

Page 5

1 HERMAN JONES, Ph.D.,
 2 being first duly sworn, deposes and says in reply to
 3 the questions propounded as follows;
 4 DIRECT EXAMINATION
 5 BY MS. ALDEN:
 6 Q. Dr. Jones, my name is Amy Alden. It's nice
 7 to meet you in person. We have visited on the phone
 8 one other time, have we not?
 9 A. Yes.
 10 Q. Okay. Just for the record, tell me your
 11 name.
 12 A. Herman Jones.
 13 Q. And give me your home address, please.
 14 A. [REDACTED]
 15 [REDACTED]
 16 Q. And what is your business address?
 17 A. I'm retired.
 18 Q. Oh, okay. You know, actually, I think I
 19 knew that. But you mentioned just a minute ago that
 20 you were out of this and maybe back in neurology. So
 21 I thought maybe you were working again.
 22 A. I have to -- there has to be a 60-day lops
 23 from retirement before I could reenter a contract
 24 with the University. This is my 59th day.
 25 Q. Oh, okay. What, if anything, did you do to

Page 6

1 prepare for your deposition today?
 2 A. Nothing.
 3 Q. Okay. Prior to your retirement, were you
 4 affiliated with the University of Oklahoma College of
 5 Medicine?
 6 A. Yes. I joined faculty here in 1981 and
 7 maintained faculty status until July 1st of 2016.
 8 Q. And what was the last job that you had here
 9 at the College of Medicine?
 10 A. I was James H. Little Endowed Professor of
 11 Neurology and also Professor of Psychiatry.
 12 Q. Were you also the Dean of Students?
 13 A. That was not my last job.
 14 Q. Okay.
 15 A. That was my job from 2011 to 2015. I then
 16 returned to patient care and teaching.
 17 Q. Okay. As part of your job here with the
 18 College of Medicine, at any time was it part of your
 19 job to advise medical students regarding the
 20 residency match process?
 21 A. Yes. It was a small portion of my duties,
 22 primarily for those interested in going into
 23 neurology and psychiatry before I took the position
 24 of Associate Dean for Student Affairs at the College
 25 of Medicine in June of 2011.

Page 7

1 After that, from 2011 until June of 2015, it
 2 was a regular part of my job.
 3 Q. Was it ever a part of your job
 4 responsibility to evaluate prospective residency
 5 candidates for the University of Oklahoma?
 6 A. Yes. Probably from 1982 until my
 7 retirement.
 8 Q. And did you evaluate for all specialties, or
 9 were there any particular specialties that you helped
 10 evaluate prospective residency candidates?
 11 A. Almost always, it was neurology. I also
 12 evaluated -- helped evaluate out of my own home
 13 department in the Department of Psychiatry and also
 14 in Family Medicine.
 15 MS. NEEDHAM: Amy, just before we go on any
 16 further, I want to go ahead and do what I did this
 17 morning.
 18 MS. ALDEN: Okay.
 19 MS. NEEDHAM: He is represented by counsel
 20 in his employment capacity with the University, as
 21 long as he's within the scope of his employment,
 22 which would be his administrative or teaching duties.
 23 To the extent he offers opinions, they may be his
 24 personal opinions, and I don't represent him in that
 25 capacity.

Page 8

1 MS. ALDEN: Okay.
 2 Q. (BY MS. ALDEN) Are you okay with that,
 3 Dr. Jones?
 4 A. Yes, I am fine with that.
 5 MS. NEEDHAM: He'd prefer I not represent
 6 him at all.
 7 Q. (BY MS. ALDEN) Have you ever been the
 8 program director of a residency program?
 9 A. No.
 10 Q. As I understand it, you first met Randy
 11 Blake Patterson while you were a faculty member in
 12 the Neurology Department?
 13 A. Yes.
 14 Q. And am I correct in understanding that it
 15 was -- Dr. Patterson was a student of yours in a
 16 preclinical course that you were teaching?
 17 A. Yes. He was, I believe, in his second year
 18 of medical school. There was a course in the prior
 19 curriculum called intro to pathology. And it was
 20 divided into different human systems. And I was the
 21 course coordinator for the neurology section at that
 22 time, and so would coordinate other lectures and also
 23 provide lectures.
 24 And during one of those contacts,
 25 Dr. Patterson came up after the class and introduced

2 (Pages 5 to 8)

Herman Jones, Ph.D.

August 31, 2016

Page 13

1 terms of Dr. Patterson's career goals?

2 A. He expressed a desire to be, at that point
3 in time, a surgeon, to obtain a position in a
4 surgical position -- a surgical residency.

5 Q. At what point in time would this have been?

6 A. It would have been, I think, if I recall
7 correctly, that it was during his third year while he
8 was taking his surgery clerkship. That would have
9 been his first real experience with a surgical life.

10 Q. In terms of his suitability for a career --
11 actually, let me go back to that prior subject.

12 Did there ever come a time when his career
13 goals changed?

14 A. Yes.

15 Q. Okay. Tell me about that.

16 A. Well, after Dr. Patterson failed to obtain a
17 residency position in the main match on his first
18 go-round, we then talked about possible alternatives.

19 Q. And what alternatives did you discuss?

20 A. Well, the two -- the major fork in the road
21 at that point in time was he could decide not to
22 graduate, not walk with his class, and to still owe
23 two weeks of clinic experience in his fourth year
24 medical school so that he would not have graduated.

25 Q. Right.

Page 14

1 A. There would still be a lapse year. The
2 positive side of that would have been he could have
3 come back and applied for an away rotation.

4 Q. What does that mean?

5 A. Oh, away rotations are sub-internships,
6 fourth year experiences where a student will go and
7 audition at a particular program. For example, if I
8 thought that I wanted to be an anesthesiologist at
9 Washington University, I would apply for a two-week
10 or one-month set of experiences to go there and to
11 audition. And that's one of the criteria, is how
12 well someone does under our observation. That's one
13 of the criteria that residency program directors use
14 in preparing a rank order list.

15 Q. And when you say an away sub-internship, you
16 are talking about away from the University of
17 Oklahoma College of Medicine?

18 A. Yes, because they will have already
19 auditioned. They will have had some experience here
20 in the third-year clerkships.

21 Q. Okay. What was the other alternative or
22 alternatives to delaying graduation?

23 A. The other alternative would have been to
24 have graduated, used the upcoming year to increase
25 his viability by enrichment and involvement in

Page 15

1 additional training. In this case, obtaining a
2 Masters in Public Health. Also, to engage in
3 research in the specialty of his choice. To obtain
4 new letters of recommendation, and therefore possibly
5 look more attractive to residency program directors
6 the next year.

7 Q. Did Dr. Patterson choose one of those
8 alternatives over another?

9 A. Yes. He chose the latter.

10 Q. So he chose to go ahead and graduate;
11 correct?

12 A. Yes.

13 Q. And then to attempt to increase his
14 viability as a residency candidate by certain
15 experiences that he had in that -- I think you called
16 it a lapse year?

17 A. Yes.

18 Q. Are you familiar with the experiences that
19 he had during that lapse year that he was using to
20 try to improve his viability as a candidate?

21 A. Yes.

22 Q. Tell me about what you know about those
23 experiences.

24 A. I referred him to the Masters of Public
25 Health Program here on campus. That allowed him also

Page 16

1 to delay repayment of student loan debt.

2 I wrote him a letter of recommendation for
3 that program, and he was accepted. I also encouraged
4 him to participate in research activities. And it
5 was my understanding that he did so within the
6 Department of Surgery.

7 Q. Do you know how long the Masters in Public
8 Health Program is at the University of Oklahoma?

9 A. It is usually two semesters and a summer.

10 Q. So something that he was capable of
11 completing in that lapse year?

12 A. Yes.

13 Q. Do you know whether or not he ended up
14 getting a master's degree?

15 A. No, I don't recall.

16 Q. If he didn't get the master's degree, would
17 that experience, in your opinion, have been something
18 that would have buffed up his viability as a
19 prospective resident?

20 A. Can you say that --

21 Q. If he did not actually achieve a Master's
22 degree in public health during that lapse year, is
23 that something that would have improved his
24 viability, in your view, when he went through the
25 match the second time around?

4 (Pages 13 to 16)

Herman Jones, Ph.D.

August 31, 2016

Page 17	Page 19
<p>1 A. I would defer that to individual program 2 directors to make that decision, but would also point 3 out that at the point in time that they're looking at 4 his follow-up application, no one knows if he was 5 going to graduate or not. So as you say, he's 6 enrolled, he's scheduled to have the MPH when he 7 starts the program, or be close around there, and 8 that's what the program directors are going to be 9 cognizant of when they look and consider his second 10 application.</p> <p>11 Q. Fair enough.</p> <p>12 A. Good.</p> <p>13 Q. Suitability. You said that the two of you 14 discussed his suitability, both personally and 15 professionally, for his career goals.</p> <p>16 As far as being a surgeon, what sorts of 17 discussions did you have about his personal 18 suitability?</p> <p>19 A. We talked about commitment to that 20 particular specialty in terms of it is not uncommon 21 for general surgeons to work 60, 70, 80 hours a week. 22 And that is a huge personal commitment because other 23 things have to be sacrificed.</p> <p>24 I think -- my favorite story about that 25 comes from this campus where a neurologist and a</p>	<p>1 residency program directors at that point. He did 2 not have a strong Step 1 score. He did not have a 3 strong class rank.</p> <p>4 The Journal of Academic Medicine routinely 5 publishes surveys of residency program directors of 6 various specialties. And at that point in time, it's 7 my recollection that the most recent one of surgical 8 residency program directors talked about board 9 scores, surgery shelf exam scores, personal letters 10 of recommendation, grades, and then observed 11 supervision. And that those were the major criteria 12 that many -- that were important to surgery program 13 directors.</p> <p>14 And we talked about that in terms of that 15 his grades, and therefore class rank, were not going 16 to be a strong point. His Step 1 score, which 17 measures basic sciences, basically, was not going to 18 be a strong point for him. Therefore, he had to 19 really enhance his viability with Step 2 scores and 20 away rotations and letters of recommendation.</p> <p>21 Q. Do you know how -- do you know when 22 Dr. Patterson first sat for the Step 2 clinical 23 knowledge component of the boards? And when we are 24 talking about the boards, we are talking about the 25 United States Medical Licensing --</p>
Page 18	Page 20
<p>1 surgeon are walking at 6:30 at night and they're 2 walking in the parking garage. And the neurologist 3 turns and says, "You know, I've got to hurry home 4 because my kid's T-ball game is tonight, and I don't 5 want to be the kind of guy -- dad that misses my 6 son's T-ball game." And the surgeon turns and says, 7 "I'm that guy, because I've got to go back to the 8 trauma center."</p> <p>9 So surgeons have -- I know it's an 10 overgeneralization, but they do tend to have a big 11 commitment to that specialty. And so if you go into 12 a surgical specialty and you become a surgeon, that 13 is very different than being a physician, all other 14 things being considered.</p> <p>15 Q. Did you have any concerns about his personal 16 suitability to become a surgeon?</p> <p>17 A. I didn't -- I don't think -- I didn't tell 18 him that he couldn't do that. I told him to be aware 19 and mindful that this was a big commitment and this 20 was going to be an uphill battle for him.</p> <p>21 Q. What about professional suitability? What 22 kinds of discussions did the two of you have in that 23 regard?</p> <p>24 A. We had discussions that there were several 25 less than positive attributes about his appeal to</p>	<p>1 A. USMLE, sure.</p> <p>2 Q. -- Exam; correct?</p> <p>3 A. Yeah, USMLE.</p> <p>4 No, I don't recall.</p> <p>5 Q. Do you recall whether or not he passed the 6 first time he took the clinical knowledge component?</p> <p>7 A. CK. I don't recall, but I would 8 certainly -- I've had that information in the past, 9 but I don't -- I have not had it in front of me for 10 review.</p> <p>11 (Defendant's Exhibit No. 1 was marked for 12 identification purposes.)</p> <p>13 Q. (BY MS. ALDEN) I'll hand you what I've 14 marked as Exhibit 1 to your deposition and ask you if 15 this is familiar to you as a transcript that you have 16 seen in the past -- certified transcript of scores 17 for the United States Medical Licensing Examination?</p> <p>18 A. Yes.</p> <p>19 Q. And does that appear to you to be a 20 transcript for Randy Blake Patterson?</p> <p>21 A. Yes.</p> <p>22 Q. I'll direct you to look down about halfway 23 through the page -- the first page, and you'll see 24 that it shows clinical knowledge -- USMLE Step 2 25 clinical knowledge. And if you'll look at December</p>

5 (Pages 17 to 20)

Herman Jones, Ph.D.

August 31, 2016

Page 21

1 22, 2012, it shows that Dr. Patterson received a
2 failing score.

3 Is that what that appears to be to you?

4 A. Yes.

5 Q. Does that appear to you to be the first
6 time, based on this transcript, that he took that
7 component of the exam?

8 A. Yes.

9 Q. And he took that just prior to the 2013
10 match; correct?

11 A. Yes.

12 Q. Would that failing score have been a
13 negative data point for Dr. Patterson in going
14 through the 2013 match?

15 A. It would have been a challenge for a program
16 director to -- it would have been a challenge for a
17 program director to consider, yes.

18 Q. It would have been a negative data point?

19 A. Yes.

20 Q. So in terms of your suggestion to him that
21 he enhance his liability with a strong Step 2 score,
22 I think we can agree he did not do that?

23 A. Correct.

24 Q. And I have a question just because I
25 don't -- we talked a little bit about an away

Page 23

1 A. Yes.

2 Q. Do you know whether or not he did?

3 A. I don't -- no, I don't know. I don't have
4 access to their rank order list.

5 Q. I'm going to give you access to it right
6 now.

7 A. Well, yay.

8 That's an affirmative yay.

9 (Defendant's Exhibit No. 2 was marked for
10 identification purposes.)

11 Q. (BY MS. ALDEN) I want to represent to you
12 that what I have marked as Exhibit 2 to your
13 deposition is a series of documents we received from
14 the National Resident Matching Program pursuant to a
15 subpoena in this case. And looking through that, to
16 you, does that appear to be Dr. Patterson's rank
17 order list for 2013, 2014 and 2015?

18 A. Yes.

19 Q. And I'll ask you, if you look under the 2013
20 programs that Dr. Patterson ranked, do you see
21 anything other than surgery in terms of specialty?

22 A. No. And those would encompass both
23 categorical surgery as well as preliminary surgery.

24 Q. I suppose the point I'm getting at is, he
25 didn't take your advice and rank any specialty other

Page 22

1 experience earlier.

2 When you talk about away rotations here in
3 terms of enhancing his viability, this would have
4 been before the 2013 match; correct?

5 A. Yes.

6 Q. Are you again talking about experience away
7 from the University of Oklahoma College of Medicine?

8 A. Yes.

9 Q. Okay. Do you know whether or not he was
10 able to do any away rotations as you described?

11 A. I don't recall. We could find out from his
12 transcript, but I don't recall.

13 Q. Would that be reflected in his medical
14 student performance evaluation?

15 A. No. It would be his university transcript.

16 Q. And I think I may have gotten sidetracked a
17 little bit ago. We did say at some point in time,
18 his career goals changed, but I'm not sure that you
19 ever told me what they changed to.

20 A. When he came back, he was considering
21 alternatives of specializations of anesthesiology or
22 family medicine.

23 Q. Was it ever a recommendation that you gave
24 him, prior to the 2013 match, that he consider
25 ranking programs other than surgery at that time?

Page 24

1 than surgery; correct?

2 A. That's correct.

3 Q. Okay. We may have already discussed some of
4 these things in terms of talking about
5 Dr. Patterson's career goals and his suitability for
6 them, but you talked -- you testified that you also
7 had visits with him about hurdles or impediments for
8 him.

9 A. Yes.

10 Q. Tell me about those conversations.

11 A. Well, that when he did receive the failing
12 grade on Step 2 CK, we talked about how that's going
13 to be a further problem for him, that that would make
14 it -- I didn't use the term, but it's a nice term --
15 negative data point, and that this would be a further
16 challenge for him.

17 Q. For surgery residency or for any residency?

18 A. For any residency, either in the main match
19 or in the supplemental offer and acceptance program.

20 Q. You also said that you had conversations
21 about some alternatives. And again, we may be
22 covering old ground and I don't mean to. I just am
23 trying to get at whatever conversations you can
24 remember having with Dr. Patterson about alternatives
25 as you recall those conversations.

6 (Pages 21 to 24)

Herman Jones, Ph.D.

August 31, 2016

Page 25

1 A. Right. And we talked that he continued to
2 profess a desire to be a surgeon and wanting to be a
3 surgeon that first time around. And we talked about
4 how that was going to be difficult for a categorical
5 program, and that he might consider just a
6 preliminary program that's a one-year audition, and
7 that he can be picked up then sometime later in a
8 categorical program. Or that you can try to scramble
9 into something through the SOAP, Supplemental Offer
10 and Acceptance Program, in that week, although I
11 cautioned him against that, as I cautioned everybody.
12 It is uncontrolled chaos and there is no guarantee,
13 because there are so many potential physicians
14 chasing so few programs, and residency program
15 directors have sometimes only moments to minutes to
16 be able to extend an offer. And that no one wants to
17 use that as a reasonable backup plan, but sometimes
18 that's what you have to do.

19 Q. So when you say you cautioned him, I mean,
20 to me at least, it sounds like there is no risk in
21 it. I mean, if he gets an offer from somebody during
22 the SOAP, then he's got employment.

23 Is that incorrect?

24 A. That part isn't correct. That part is not
25 incorrect, but --

Page 27

1 e-mails and written documentation at that point, no,
2 nothing comes to mind.

3 Q. Do you have a recollection whether or not
4 Dr. Patterson was required to remediate any course
5 work during his medical school tenure?

6 A. I recall that he may have, but I cannot
7 recall the specifics of it.

8 (Defendant's Exhibit No. 3 was marked for
9 identification purposes.)

10 Q. (BY MS. ALDEN) I'll hand you what I've
11 marked as Exhibit 3 to your deposition.

12 Do you recognize this, Dr. Jones?

13 A. Yes, I do.

14 Q. Can you tell me what it is?

15 A. It is the Medical Student Performance
16 Evaluation for Randy Blake Patterson. It is dated
17 October 1, 2012. It appears to be a true and
18 accurate representation of my document, and it is my
19 signature at its end.

20 Q. If you'll look at Page 2 of the document,
21 under obstetrics and gynecology clerkship --

22 A. Yes.

23 Q. -- it shows that he had to remediate that --
24 I don't know if it's an internship --

25 A. Clerkship.

Page 26

1 Q. You cautioned him to have a better backup
2 plan?

3 A. Yes.

4 Q. And did you have any specific discussions
5 about what that backup plan might look like?

6 A. Yes.

7 Q. And --

8 A. Preliminary programs, rank as many different
9 programs as possible, and if not -- if that's not
10 feasible, then we prepare a plan B. And then we
11 started with the discussions about, okay, how are you
12 going to make yourself more viable if you don't get
13 anything this time.

14 Q. So it sounds to me like going into the 2013
15 match, there was a fair amount of concern that he was
16 not going to match that first time out.

17 MS. TEMPLETON: Object to the form.

18 THE WITNESS: There was concern on my part,
19 5 certainly. And I think he expressed that as well.

20 Q. (BY MS. ALDEN) Is there anything in
21 addition to what we've already discussed that you can
22 tell me about discussions that you had with him
23 regarding ways to increase his viability in the main
24 match?

25 A. No. Unless there is something in the

Page 28

1 Q. A clerkship.

2 Would that have been a negative data point
3 for programs considering him as a prospective
4 resident?

5 A. Yes.

6 Q. You may have already covered this, but I
7 believe that you had a meeting with Dr. Patterson in
8 August of 2012.

9 Does that ring a bell with you?

10 A. Yes.

11 Q. Okay. And I am under -- I have the
12 understanding that you told him he was going to have
13 a -- he was going to have to have a significant
14 improvement on his Step 2 CK to enhance his viability
15 as a prospective resident --

16 A. Yes.

17 Q. -- residency candidate.

18 At that time in August of 2012 -- and take a
19 look back at his transcript if you'd like, his USMLE
20 transcript -- he had not -- he'd only taken the Step
21 1 at the time you gave that advice.

22 A. Yes.

23 Q. So when you were telling him he needed to
24 have a significant improvement, you were talking
25 about a significant jump from the kind of poor score

7 (Pages 25 to 28)

Herman Jones, Ph.D.

August 31, 2016

Page 29

1 that you just previously described on the Step 1 to
2 the Step 2 CK; is that right?

3 A. Yes.

4 Q. Okay.

5 A. And also to have it early enough to be able
6 to demonstrate to residency program directors that
7 that had, in fact, occurred.

8 Q. And what would have been early enough for
9 him to demonstrate to residency program directors
10 that that had occurred?

11 A. Well, they don't have to enter a final rank
12 order list until February, but they will offer
13 invitations for interviews in surgery usually in the
14 beginning of October. So the more positive
15 information that's there, the better. The caution
16 being you want him to have as good a score as
17 possible as opposed to an early score, and sometimes
18 those are mutually exclusive. That gives you less
19 time to study before you sit for the exam.

20 Q. But at the very latest, it would have been
21 important for him to have been able to demonstrate a
22 good strong score on the Step 2 CK prior to the time
23 that the programs did their own rank order lists in
24 February of 2013?

25 A. Yes.

Page 31

1 relations on OU, one of my jobs, I interpreted, was
2 to meet and groom as many different residency program
3 directors across the nation so that if they saw from
4 OU, especially during SOAP -- because the rules of
5 the supplemental offer program is I cannot reach out
6 on behalf of my students, but the residency program
7 director can reach out to me. And so I wanted as
8 many of them to reach out to me, if they knew me, so
9 that I could put a plug in for my students.

10 Q. Did Dr. Patterson --

11 A. But I'll go back.

12 Q. Okay.

13 A. I think that residency program directors in
14 psychiatry look for more self-centeredness, more
15 well-balanced and more interpersonal skills than
16 someone maybe in a surgical technique. I think that
17 there are certain residency program directors that
18 they just look for the capacity to learn, because
19 they figure I can teach you anything that you need to
20 know in three or four or seven years.

21 So I think residency program directors have
22 a variety of different things. That's one of the
23 reasons that those academic medicine articles,
24 "What do I look for in a good candidate" help us
25 with.

Page 30

1 Q. Okay. Did you ever advise Dr. Patterson
2 that he should interview well and interview often?

3 A. Yes.

4 Q. Is that something you told a lot of
5 students?

6 A. That's one of my mantras, yes.

7 Q. Sure. When you told him he should interview
8 often, did you have a number in mind?

9 A. 12 to 15 --

10 Q. So is there --

11 A. -- for surgical -- for a surgical program.

12 Q. Okay. And when you said -- told him to
13 interview well, what do you mean by that?

14 A. To be everything that would be positive to a
15 residency program director in surgery. And I
16 remember specifically with this class being --
17 uniformly saying you want to mirror good behavior,
18 you want to show them commitment to the process, you
19 want to be respectful, because those are the things
20 that residency program directors in surgery look for.

21 Q. Do residency program directors in other
22 specialties look for that too?

23 A. No, not to the same degree. I think that
24 residency program directors -- and I maintain contact
25 during this -- in addition just to having collegial

Page 32

1 And then the other thing that we use is, at
2 the end of every intern year, P1, postgraduate year,
3 the University of Oklahoma sends out a survey to all
4 residency program directors: Would you take this
5 student again? Were they well prepared compared to
6 other folks? What would you do differently? And
7 there would be times when I would see residency
8 program directors say, "No, I'd never take another OU
9 student ever again." Yow.

10 So don't ever go to Knoxville.

11 Q. I am never going to apply to a residency
12 program. So no worries.

13 A. I don't know. My favorite student was the
14 one who applied and was accepted to OU Medical School
15 at the age of 56.

16 Q. I'm fairly certain I know my limitations,
17 Dr. Jones.

18 A. Unfortunately, he did not, but he graduated
19 as a doctor.

20 Q. When Dr. Patterson did not match in the main
21 residency match, did he participate in the SOAP
22 process in 2013?

23 A. You know, I don't recall. My general
24 impression was I thought that he did, but I would --
25 if he didn't, I would stand corrected.

8 (Pages 29 to 32)

Herman Jones, Ph.D.

August 31, 2016

Page 33

1 Q. And as you mentioned, program directors are
2 permitted to contact you as the Dean of Students to
3 obtain input on a candidate?

4 A. (Witness nods head.)

5 Q. Yes?

6 A. Yes, that is correct. I didn't think you
7 were -- I didn't know if you were finished.

8 Q. I'm sorry.

9 A. That's okay.

10 Q. Did you field any calls inquiring about
11 Dr. Patterson during the 2013 SOAP process?

12 A. No.

13 Q. And you would have known if Dr. Patterson
14 was offered something through the SOAP program,
15 wouldn't you, because he would have to have accepted
16 it; correct?

17 A. No, not necessarily. I would -- I would see
18 that he had been extended an offer and -- but not
19 necessarily whether he took it or not. I've had
20 individuals who, crazily enough, didn't get anything
21 in the main match and applied for a SOAP program and
22 got a SOAP offer, and decided, no, I don't want to do
23 it.

24 Q. So with the SOAP program, it's different
25 than the residency -- the main match in that you are

Page 35

1 (Defendant's Exhibit No. 4 was marked for
2 identification purposes.)

3 Q. (BY MS. ALDEN) Dr. Jones, I have handed you
4 what I've marked as Exhibit 4 to your deposition.
5 And I will represent to you that this is a
6 lawyer that Dr. -- not -- I'm sorry. Not a lawyer.
7 It's a letter that Dr. Patterson's lawyers provided
8 to us in this case lining out the testimony that they
9 expect that you and another physician will give in
10 this case as non retained experts. And so I want to
11 ask you about some of those opinions that we've been
12 told you are going to give.

13 A. Okay.

14 Q. And would you like to take a minute to look
15 at it?

16 A. I would.

17 Q. Go ahead.

18 MS. TEMPLETON: Can we take, like, a
19 two-minute break?

20 MS. ALDEN: Sure.

21 (Brief recess taken at 2:22 p.m.; deposition
22 resumed at 2:24 p.m.)

23 Q. (BY MS. ALDEN) Dr. Jones, we're back on the
24 record. And I know you've done this a time or two.
25 So you know that you're still under oath?

Page 34

1 not contractually obligated to take an offer that you
2 are given?

3 A. That is correct.

4 Q. Okay. You were not present for any
5 interviews that Dr. Patterson gave with any residency
6 programs, were you?

7 A. No. That would be outside the scope of what
8 I could do.

9 Q. Well, I just wasn't sure if he had
10 interviewed here at OU, if that's something you would
11 have been a party to?

12 A. He did interview here inside the Department
13 of Surgery. But as Dean of Student Affairs, I would
14 not have been privy to that. They do -- they take
15 care of their own in there. And that he would be --
16 Jason Lees would be the resident program director at
17 that time. And I do know that they gave him an
18 interview.

19 Q. Do you know anything about how the interview
20 went?

21 A. No.

22 Q. So it's fair to say you don't know if he
23 interviewed well or not?

24 A. Correct. I do remember that he interviewed.
25 But other than that, that's all I know.

Page 36

1 A. Yes.

2 Q. Have you had an opportunity to review what
3 I've marked as Exhibit 4?

4 A. Yes.

5 Q. Okay. I will call your attention to -- I
6 guess it would be the last paragraph on the first
7 page. It states, "Dr. Jones will testify that Randy
8 Blake Patterson likely would have received a match
9 at a mid-level program had he not had a gap year and
10 been delayed, though probably not in his first
11 choice -- surgery."

12 Is that an opinion that you plan to give at
13 the trial of this matter?

14 A. No.

15 Q. Okay. Is that an opinion that you avow?

16 A. No.

17 Q. Okay. The second page I'll call your
18 attention to, the first full paragraph. It says that
19 you will testify, "Approximately 85 to 90 percent of
20 OU graduates match into a residency program. It is
21 common knowledge in the residency training programs
22 in the U.S. that a gap year is detrimental to
23 subsequent applications unless the student was
24 involved in something that enhances his
25 attractiveness to a residency program such as a

9 (Pages 33 to 36)

Herman Jones, Ph.D.

August 31, 2016

Page 37

1 series research endeavor. The only one-year graduate
2 program at OU is a Masters of Public Health, which
3 Dr. Patterson obtained. This did not prove to
4 enhance his attractiveness to technically driven
5 specialties and he likely did not obtain a match due
6 to his gap year."

7 Is that -- to the extent that it's an
8 opinion, to the extent it is factual information --
9 well, let me strike that.

10 To the extent that there's an opinion in
11 there, is that an opinion you intend to offer at the
12 trial of this matter?

13 A. No, that's not my opinion.

14 Q. Do you intend to offer any opinions about
15 whether and to what extent Randy Patterson was
16 damaged as a result of the allegations that form the
17 basis of this lawsuit?

18 A. In terms of that he was not given -- if I
19 may, that he was not given access to a Step 2 CS in
20 time for --

21 Q. Correct.

22 A. Okay. So I believe that that was a negative
23 data point, but I am unable to directly link that to
24 the fact that he did not get a position. I think
25 that there are several other factors at play. I was

Page 38

1 not present during many of the other experiences that
2 could have enhanced his viability, how well he
3 interviewed, those types of things, the stuff that
4 we -- the things that we have talked about before.

5 So I cannot link that particular thing to
6 that. And it's been my experience, off-cycle
7 graduates, e.g. gap years, are not always negative.
8 And probably I can give you this statistic -- and I
9 know there's lies, damn lies -- statistics in
10 accounting. But almost one-half of Stanford Medical
11 School graduates have gap years, but they take those
12 gap years and do research so they are published
13 authors when they come through whatever match they
14 wish.

15 So being off cycle raises a red flag, but
16 does not always cause to be the single factor that
17 prohibits someone from obtaining a residency.

18 Q. And so you are not going to give an opinion
19 to the effect that Dr. Patterson's inability to
20 retake the Step 2 clinical skills exam any sooner
21 than he did was a cause of him having a gap year or a
22 failure to match?

23 A. I -- to be clear, I will not offer that
24 opinion. I will point it out as a negative data
25 point, but it is not my opinion that that is the

Page 39

1 single thing that caused this to occur.

2 Q. With respect to the second full paragraph on
3 page 2 of Exhibit 4, "The USMLE CS2 exam" -- and by
4 that, we're talking about the Step 2 clinical skills;
5 correct?

6 A. Yes.

7 Q. -- has been controversial since its
8 inception. The CS2 has a failure rate of 4 to 5
9 percent nationally, and studies have shown that those
10 who fail suffer a \$1,000,000 financial detriment as a
11 result."

12 What research did you do to -- first of all,
13 let me ask you. Is that your opinion?

14 A. No.

15 MS. ALDEN: Okay. Fair enough. I won't ask
16 any more questions about it.

17 I don't think I have any further questions
18 right now.

19 THE WITNESS: There's always rebuttal.

20 CROSS EXAMINATION

21 BY MS. TEMPLETON:

22 Q. Dr. Jones, I just have a few questions for
23 you.

24 Although you have stated that you will not
25 necessarily be offering this testimony at the time of

Page 40

1 trial, you and I spoke on the phone; is that correct?

2 A. Yes.

3 Q. During that phone conversation, you stated
4 to me the information contained in the paragraph that
5 Ms. Alden just referenced that there are studies that
6 have indicated that there are damages up to
7 \$1,000,000 with regard to failing the CS2 exam and
8 that which ensues.

9 Do you recall that part of our
10 conversations?

11 A. No. The only recollection I have about CS2
12 and \$1,000,000 was from an article from the Journal
13 of Academic Medicine in which it was pointed out that
14 it took up to \$1,000,000 in fees in order to discern
15 a single failure on Step 2 CS.

16 Q. Could you explain that further to me?

17 A. Certainly. Let's just say -- I don't know
18 what it was at the time. Let's just say that my
19 going and taking Step 2 CS, the fee is going to be,
20 say, \$1,600. And I'm going to also have to go travel
21 to one of seven centers. And that Step 2 CS, if you
22 look at how much money is extended by those
23 applicants, that it's about \$1,000,000 in expenses to
24 those people taking the examination for every
25 failure.

10 (Pages 37 to 40)

Herman Jones, Ph.D.

August 31, 2016

Page 41

1 Q. Okay. Thank you.

2 A. But if there's -- I don't know of any way --
3 I don't know of any way to be able to say how much
4 money a Step 2 CS failure really provides. I've had
5 several experiences where I've had people who take
6 Step 2 CS, fail it, and still get into highly
7 regarded surgical residency programs.

8 I guess my favorite story is -- I believe it
9 was out of this class. A person takes his integrated
10 clinical encounter and fails it. He gets his failing
11 score. I bring him in. I go, "What happened?" All
12 of our efforts to make sure that you were fine, they
13 take -- all of our medical students take an end of
14 third year Objective Structure Clinical Encounter,
15 OSCE, that mimics as close as we can Step 2 CS to
16 provide them that kind of experience.

17 So I look back at this guy's scores. He did
18 fine. And I said, "What happened?" He said, "I was
19 in and out of there in each one of those sessions in
20 seven minutes."

21 And I said, "Stupid fool." I said, "You
22 didn't demonstrate any empathy. You didn't use
23 enough time." And he goes, "Oh, empathy. I can fake
24 that."

25 He's going to be a fine surgeon.

Page 42

1 Q. Sir, also in our conversation when we were
2 discussing the Masters of Public Health and kind of
3 what to do to make yourself look better in a gap
4 year --

5 A. Yes.

6 Q. -- my notes reflect from our conversation
7 that you had told me about a Masters of Science
8 Program, much like an LLM for lawyers, that Tulane
9 offers that's a one-year program, but more of a
10 technically driven field, so to speak, or program,
11 and that that would be something that might -- or
12 would more likely make you enticing or --

13 A. Viable.

14 Q. -- viable with the more technical
15 specialties, such as surgery, anesthesia, those sorts
16 of things.

17 Did you, during this conversation, also tell
18 me that the Masters of Public Health is helpful in
19 the less technical specialties such as family
20 practice, pediatrics, those sorts of things?

21 A. Yes, I did mention that, although I would
22 hesitate to use the word technical, and would insert
23 the word procedural.

24 Q. Okay. That's fair.

25 A. And so, yes, the Masters of Public Health

Page 43

1 was a viable option, all the time knowing that I
2 recommended to Dr. Patterson that at the same time he
3 involves himself with activities and research in
4 those areas with which he's interested, because the
5 viability in ascending area is involved in research,
6 involved in research that's published, involved in
7 research publication as an author.

8 So those -- I'm a residency program
9 director. I see he's done some work with Bill
10 Dooley. Bill Dooley is big in intraductal lavage for
11 in situ brain -- excuse me, breast cancer. And if
12 something had come from that and he got published, I
13 think that would have been a very viable point.

14 Q. And he did participate in other surgery
15 research projects during that year; true?

16 A. Surgical --

17 MS. ALDEN: Object to the form.
18 Go ahead.

19 THE WITNESS: Surgical. I believe he did a
20 pediatric otorhinolaryngology. That's a surgical
21 technique. And, you know, residency program
22 directors have told me over the years that they tend
23 to look at particular experiences more than others.

24 For example, if I'm a procedurally based
25 program director, e.g., surgery, I'm going to look

Page 44

1 at, okay, how did they do on surgery? How did they
2 do if they took an anesthesia -- because it's still
3 in the OR, just the other side of the tent -- OB-GYN,
4 because OB-GYNs are the only specialty that refers to
5 themselves both as a physician and as a surgeon. So
6 they tend to look at those more. They probably would
7 not pay a lot of interest in how well they did in
8 Psych.

9 So, yeah, residency program directors have
10 different biases.

11 Q. Do you recall during our conversation that
12 you told me if you have a gap year and you do
13 something good, such as research for advanced
14 training, that's helpful? If you have a gap year and
15 you don't fill that, that's harmful?

16 A. Yes, those are my words.

17 MS. TEMPLETON: Those are all the questions
18 I have.

19 MS. ALDEN: I don't have any further
20 questions.

21 We do need to make a little bit more of a
22 record. Just -- I know you know this, Dr. Jones, but
23 you have the right to read and sign your deposition.
24 You need to let the court reporter know on the record
25 what your decision is in that regard.

11 (Pages 41 to 44)

Herman Jones, Ph.D.

August 31, 2016

Page 45

1 THE WITNESS: After thoughtful reflection, I
 2 will waive that responsibility.
 3 (Signature waived; witness excused;
 4 deposition concluded at 2:40 p.m.)
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 46

1 CERTIFICATE
 2 STATE OF OKLAHOMA)
) SS:
 3 COUNTY OF OKLAHOMA)
 4 I, JILL TUCKER SHAW, C.S.R. for the State of
 5 Oklahoma, certify that HERMAN JONES, Ph.D., was by me
 6 sworn to testify the truth; that the deposition was
 7 taken by me in stenotype and thereafter transcribed
 8 and is a true and correct transcript of the testimony
 9 of the witness; that the deposition was taken on
 10 August 31, 2016, in Oklahoma City, Oklahoma; that I
 11 am not an attorney for or a relative of either party,
 12 or otherwise interested in this action.
 13 Witness my hand and seal of office on this,
 14 the 6th day of September, 2016.
 15

16 JILL TUCKER SHAW, C.S.R.
 17 Oklahoma Certified Shorthand Reporter
 18 Certificate No. 01459
 19 Expiration Date: December 31, 2016
 20
 21
 22
 23
 24
 25

12 (Pages 45 to 46)